jurors, witnesses and persons connected with the case, the trial was held public. The court held that public meant only that the trial was not secret. *People* v. *Swafford,* 65 Cal. 223, 3 Pac. 809. This case was followed by *People* v. *Kerrigan,* 73 Cal. 222, 14 Pac. 849; *People* v. *Sprague,* 53 Cal. 491; *Benedict* v. *People,* 23 Colo. 126, and *Grimmet* v. *State,* 22 Tex. App. 36. A case in New York nearly on all fours with the principal case was decided to have been a public trial. In that case the judge, on account of the lascivious nature of the testimony, excluded all but those having business with the court or whose presence was requested by the defendant. It was there said that the trial judge has discretion so as to protect the public morals and the test is whether or not the discretion has been abused. *People* v. *Hall,* 51 N. Y. App. Div. 57. On the other hand there are strong cases decided on the other side and substantially agreeing with the principal case. In one case the judge ordered all "but reputable citizens" excluded; and who were "reputable citizens" was left entirely to the discretion of an officer stationed at the door. The order was carried out regardless of the protests of the defendant's attorneys, and large numbers of the friends of the accused were excluded although the court room was only partially filled by officers of the court. In a well written opinion the court held this not to have been a public trial. *People* v. *Murray,* 89 Mich. 276, 50 N. W. 995, 28 Am. St. Rep. 294, 14 L. R. A. 809. Another case holding substantially with *People* v. *Murray* decided that a prisoner had not been accorded a public trial when all had been excluded from the court room except the officers of the court. In the course of the opinion the judge says, "The doors of the court room are expected to be kept open, the public are entitled to be admitted * * * with due regard to the size of the court room, the conveniences of the court, the right to exclude objectionable characters, and youth of tender years, and to do other things which may facilitate the proper conduct of the trial." *People* v. *Hartman,* 103 Cal. 242, 37 Pac. 153, 42 Am. St. Rep. 108. This case disaffirms the earlier doctrine propounded in *People* v. *Swafford,* 65 Cal. 223, and distinguishes the cases of *Grimmet* v. *State,* 22 Tex. App. 36; *State* v. *Brooke,* 92 Mo. 573, *People* v. *Kerrigan,* 73 Cal. 222. Upon this general question, see also: *People* v. *Sprague,* 53 Cal. 491; *Stone* v. *People,* 3 Ill. 326; *State* v. *Brooks,* 92 Mo. 542; *Kugat* v. *State,* 38 Tex. Crim. 681; *United States* v. *Buck,* 24 Fed. Cas. No. 14, 680; *State* v. *McCool,* 34 Kan. 617. On the second point in the case, as to whether or not the defendant waived recourse to the error by not objecting at the trial, there is also a conflict of opinion. One line of cases holds that the burden is on the defendant to show error, and his silence at the trial raises a presumption that the exclusion was at his request. *People* v. *Swafford,* 65 Cal. 223; *Benedict* v. *People,* 23 Colo. 126. *Contra,* in accord with the principal case: *People* v. *Hartman,* 103 Cal. 242; *People* v. *Murray,* 89 Mich. 276.

CRIMINAL LAW—IMPEACHMENT OF WITNESS.—The three accused killed the deceased by shooting at him through the walls of a house. Their defense was that they were on his bond in a criminal case and were trying to arrest him, and he resisted. The question arising was as to what questions could

be asked of a defendant, on cross-examination, to impeach his own credibility, when he appeared as a witness in his own behalf. *Held,* that the court should not permit him to be questioned as to whether he had ever been "arrested" for, or "indicted" for, crimes. The question should, at the furthest, be asked as to his "conviction." *State* v. *Barrett et al.* (1906), — La. —, 42 So. Rep. 513.

There seems to be a great conflict in the decisions of the different states as to what questions are proper in such cases. For cases in support of the view taken in the principal case see *State* v. *Murphy,* 45 La. Ann. 958, 13 So. Rep. 229; *State* v. *Southern,* 48 La. Ann. 628, 19 So. Rep. 668; *State* v. *Walsh,* 44 La. Ann. 1122, 11 So. Rep. 811; *State* v. *Taylor,* 45 La. Ann. 605, 12 So. Rep. 927. *State* v. *Jackson,* 44 La. Ann. 160, 10 So. Rep. 600, is differentiated on the ground that it simply held that when a witness is called to impeach the character of a witness, his testimony must be confined to the general character of the witness and cannot be extended to particular acts. Also differentiated are *State* v. *Underwood,* 44 La. Ann. 852, 11 So. Rep. 277, and *State* v. *Kennon,* 45 La. Ann. 1192, 14 So. Rep. 187, on the ground that their doctrine is, that the defendant cannot be cross-examined as to matters not testified to by him in chief. The defense, on a rehearing of the principal case, cites the following cases to show that these questions were improper. *Bartholomew* v. *People,* 104 Ill. 601, 44 Am. Rep. 97, which held that it is the *conviction and not the charge* that may be shown, and the reason is that no inference of guilt can be drawn from an arrest or a charge—much less an inference of guilt of an offence importing unveracity. *People* v. *Brown,* 72 N. Y. 571, 28 Am. Rep. 183; *Brown* v. *People,* 8 Hun (N. Y.) 562, holding it error to allow the question: "How many times have you been arrested?" *State* v. *Huff,* 11 Nev. 17, held it was error to allow to be asked: "How many times have you been arrested for beating women and children?" See, also, *People* v. *Hamblin,* 68 Cal. 101, 8 Pac. Rep. 687; *Ryan* v. *People,* 79 N. Y. 593, 594; *Clarke* v. *State,* 78 Ala. 474, 56 Am. Rep. 45. In *Parker* v. *Commonwealth,* 51 So. W. Rep. 573, 21 Ky. Law Rep. 406, it was held improper, on cross-examination, to ask: "Have you ever been indicted for any crime?" In the principal case the court, after reviewing these decisions, said: "Had the questions on the trial been objected to from the standpoint now urged, the court should have sustained the objection." WIGMORE, EVIDENCE, §§ 980, 982; *State* v. *Bates,* 46 La. Ann. 853, 15 So. Rep. 204. "But we do not feel warranted in enlarging, on the rehearing, the objections submitted to the trial court on the trial." BREAUX, C. J., concurs in the decree but dissents from the opinion expressed by the court, *supra,* and cites cases in support of his view. Thus the accused may be asked on cross-examination: "Have you not served a term in the penitentiary?" *State* v. *McCoy,* 109 La. 682, 33 So. Rep. 731. "How many times have you been before the courts?" *State* v. *Callian,* 109 La. 346, 33 So. Rep. 363. "Or in trouble?" *State* v. *Casey,* 110 La. 712, 34 So. Rep. 746. Other cases taking this view are *Hanoff* v. *State,* 37 Ohio St. 182, 41 Am. Rep. 496; *People* v. *Cummins,* 47 Mich. 336, 11 N. W. 184, 186; *Wilbur* v. *Flood,* 16 Mich. 40, 93 Am. Dec. 203; 1 GREENLEAF,

EVIDENCE, § 445; *People* v. *Mather,* 4 Wend. (N. Y.) 229, 21 Am. Dec. 122; JONES, EVIDENCE, Vol. 3, p. 83. The weight of authority seems to be against the opinion expressed by the majority of the court in the principal case.

DAMAGES—MENTAL ANGUISH.—The defendant railroad company, acting as a common carrier, contracted to carry the dead body of the plaintiff's wife to a designated place. In transferring the body from one train to another, the agents of the defendant negligently allowed it to remain outside in the rain, thereby damaging the casket and badly mutilating the corpse. The plaintiff brought an action *ex delicto* against the railroad company. *Held,* he could recover, not only for the damage to the casket, but also for mutilation and disfiguring of the corpse. *Lindh* v. *Great Northern Ry. Co.* (1906), —' Minn. —, 109 N. W. Rep. 823.

This case follows *Larson* v. *Chase,* 47 Minn. 307, and is directly contrary to *Long et al* v. *Chicago, R. I. & P. Ry. Co.,* decided by the Supreme Court of Oklahoma in 1906, and found in 86 Pac. Rep. 289. A full discussion of the authorities will be found in a comment on the above case in 5 MICH. LAW REV. 126.

EMINENT DOMAIN—FOREST PRESERVES—ACQUISITION OF TITLE.—By the construction of a dam by the state, 2754 acres of defendant's lands were inundated and the timber thereon destroyed. The board of claims, awarding certain damages, described not only the lands actually covered by water from the overflow, but also a belt of 450 acres surrounding these lands on the margin of the water, and in its decision found the state had permanently appropriated the lands. Action was brought under the statute to recover damages and penalties for cutting and carrying away trees from state lands. *Held,* that the defendant was divested of, and the state acquired title in fee, not only to the land actually overflowed but also to the belt of 450 acres, and that the state was entitled to maintain an action for the penalties. *People* v. *Fisher et al* (1906), 101 N. Y. Supp. 1047.

The decision turns upon the necessity of the state's appropriating the tract of 450 acres lying outside of the inundated area. The general rule, that in the exercise of the right of eminent domain the use only is appropriated and the fee remains in the original owner, finds an exception in this case, at least as to the amount of land covered by the reservoir. The exception appears to be created by statute. Laws of 1894, § 73, C. 338. There seems, however, to be no statutory authority which recognizes the taking of any private property other than such as was overflowed as a result of the construction of the dam. It is not enough to say that the conduct of the original owner implied consent to the appropriation. "The public agencies seeking to exercise this high prerogative must be careful to keep within the authority delegated, since the public necessity cannot be held to extend beyond what has been plainly declared on the face of the legislative enactment." COOLEY, CONSTITUTIONAL LIMITATIONS (7th Ed.), p. 781; *Stanford* v. *Worn,* 27 Cal. 171; *Dalton* v. *Water Commissioners,* 49 Cal. 222; *Mitchell* v. *Illinois, &c., Coal Co.,* 68 Ill. 286; *Weckler* v. *City of Chicago,* 61 Ill. 142; *State* v. *Far-*